

#### § 39.4

the Secretary has certified the approved application for such grant to the Secretary of the Treasury, the United States shall be entitled to recover any such unused grant funds from such State.

(Authority: 38 U.S.C. 2408(d))

(Approved by the Office of Management and Budget under control number 2900-0375)

[47 FR 49395, Nov. 1, 1982, as amended at 45 FR 34988, Aug. 23, 1989]

#### **§ 39.4 Disallowance of a grant application and notice of a right to hearing.**

(a) No application for the establishment, expansion or improvement of State veterans' cemeteries shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall be in accord with the provisions §§18.9 and 18.10, Title 39, Code of Federal Regulations. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

(Authority: 38 U.S.C. 2408(c)(2))

#### **§ 39.5 Responsibilities following project completion.**

(a) States shall monitor use of the facility by various sub-groups and minority groups. To the extent that underutilization by any of these groups is determined to exist, a program shall be established to inform members of these groups about benefits available to them. The information regarding the program shall be available in a language other than English where a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs such service or information.

(b) State veterans' cemeteries established, expanded, or improved with as-

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sistance under this program shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to safety of users.

(2) The cemetery shall be kept open for public use at reasonable hours and time of the year.

(Authority: 38 U.S.C. 2408(c)(1))

(c) The State, in coordination with the Secretary, shall audit such projects at their completion in accordance with Attachment P. OMB Circular A-102 and audit procedures established by the VA Office of the Inspector General. A copy of the audit shall be forwarded to the Director, State Cemetery Grants Program, giving the date and location where the audit was made and citing any deficiencies and corrective action taken or proposed.

(d) VA, in coordination with the State, shall inspect the project at completion for compliance with the standards set forth in §39.8 and at least once in every 3-year period following completion of the project, and throughout the period the facility is operated as a State veterans' cemetery. A copy of the inspection shall be forwarded to the Director, State Cemetery Grants Program, giving the date and location where the inspection was made and citing any deficiencies and corrective action taken or proposed.

(e) Failure of the State to comply with paragraphs (a) through (c) of this section shall be considered cause for the Department of Veterans Affairs to suspend any payments due a State on any or all projects until the situation involved is corrected.

(Authority: 38 U.S.C. 2408(c)(2))

#### **§ 39.6 State to retain control of operations.**

Neither the Secretary nor any employee of the Department of Veterans Affairs shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans' cemetery constructed, expanded, or improved with

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assistance received under this program except as prescribed in this part.

(Authority: 38 U.S.C. 2408(c)(2))

### § 39.7 Recapture.

If a State which has received a grant to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as veterans' cemetery, or uses any part of the funds provided through such grant for a purpose other than for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State in connection with the establishment, expansion or improvement of such cemetery.

(Authority: 38 U.S.C. 2408(b)(4))

### § 39.8 General standards for site selection and construction of State veterans' cemeteries.

(a) *General.* (1) The various codes, requirements, recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which reference is made in these standards, are applicable to grants for construction of State veterans' cemeteries. Additional information concerning these standards may be obtained from the Department of Veterans Affairs, National Cemetery Administration (40G), 810 Vermont Avenue, NW., Washington, DC 20420.

(2) These standards constitute general design and construction criteria and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 2408.

(3) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. These standards must be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards will provide equivalent or better design criteria. Conversely, compliance is required with State and local codes where such requirements provide a higher standard. The additional cost, if any, in using standards which are higher than those of the Department of Veterans Affairs (VA)

should be documented and justified in the application.

(4) The space criteria and area requirements referred to in these standards should be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be required by the program but are subject to approval by VA. Substantial deviation from the space or area standards should be carefully considered and justified, except for occasional variances which would require individual justification. Failing to meet or exceeding the standards by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. VA participation may be subject to proportionate reduction in those projects which unjustifiably exceed maximum space or area criteria.

(b) *Site planning standards*—(1) *Site selection*—(i) *Location.* The land should be located as closely as possible to the densest veteran population in the area under consideration.

(ii) *Size.* Sufficient acreage should be available to provide gravesites for estimated needs for at least 20 years. Acreage could vary depending on the State veteran population and National Cemetery availability.

(iii) *Accessibility.* The site should be readily accessible by highway, bus or railroad.

(iv) *Topography.* The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land should not be subject to flooding.

(v) *Water table.* The water table should be lower than the maximum proposed depth of burial.

(vi) *Soil requirement.* The soil should be free from rock, muck, quicksand, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting lawns, shrubs, and trees, with normal care and without the addition of topsoil.